



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 19-6

December 10, 2020

Petition of CoxCom, LLC d/b/a Cox Communications New England to establish and adjust the equipment and installation rates for the Town of Holland

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HEARING OFFICER RULING

In this Ruling, the Department of Telecommunications and Cable (“Department”) grants the Motion for Protective Treatment of Confidential Information (“Motion”) filed by CoxCom, LLC d/b/a Cox Communications New England (“Cox” or “Company”) in the above-captioned matter.

I. ANALYSIS AND FINDINGS

On October 21, 2020, Cox filed a Motion requesting confidential treatment of in-house and outside work hours that are not disclosed in the Federal Communications Commission (“FCC”) Form 1205 in response to Record Request Four of the Department. *See* Motion at 1. Cox requests that the Department grant the Motion for a period of five years and that the Department provide Cox an opportunity to renew its request for confidential treatment upon expiration of the initial five-year period. *See id.* at 3. The Department grants the Motion, for the reasons discussed below.

The FCC’s cable rate regulations permit franchising authorities to “require the production of proprietary information to make a rate determination” in cases where cable operators have

submitted initial rates or have proposed rate increases.<sup>1</sup> 47 C.F.R. § 76.938. Federal regulations also state that “[p]ublic access to such proprietary information shall be governed by applicable state or local law.” *Id.* In turn, the Department “is the certified ‘franchising authority’ for regulating basic service tier rates and associated equipment costs in Massachusetts.” 207 C.M.R. § 6.02; *see also* G.L. c. 166A, § 15.

Under state law, information filed with the Department may be protected from public disclosure, subject to certain conditions:

[T]he [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need. G.L. c. 25C, § 5.

Chapter 25C, section 5 establishes a three-part standard for determining whether, and to what extent, the Department may protect information from public disclosure. First, the information for which protection is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” *Id.* Second, the party seeking protection must rebut the statutory presumption that all such information is public information by proving the need for its non-disclosure. *Id.*; *see also* G.L. c. 66, § 10. Third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. *See* G.L. c. 25C, § 5; *Investig. by the Dep’t of Telecomms. & Energy on its own Mot. into*

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<sup>1</sup> For example, the FCC has suggested that data regarding a cable operator’s incurred costs, while potentially proprietary, are “material and relevant” to a franchising authority’s review of the operator’s rates. *See, e.g., In re Comcast Cablevision of Dallas, Inc. Order Setting Basic Equip. & Installation Rates in Farmers Branch, TX (TX0624)*, DA 04-1703, *Order*, 19 FCC Rcd. 10,628, 10,639, ¶¶ 25-26 (June 14, 2004); *In re TCI of Pa., Inc. Appeal of Local Rate Order of the City of Pittsburgh, Pa., Memorandum Op. & Order*, 19 FCC Rcd. 312, 316, ¶ 16 (Jan. 9, 2004).

*the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Mass. ' intrastate retail telecomms. servs. in the Commonw. of Mass., D.T.E. 01-31 Phase I, Interlocutory Order* (Aug. 29, 2001) at 3 (citing G.L. c. 25, § 5D, the predecessor to G.L. c. 25C, § 5). The Department grants the Motion, consistent with applicable law and Department precedent, as discussed below.

The Department first addresses whether the information Cox submitted regarding work hours is confidential and competitively sensitive. *See* G.L. c. 25C, § 5. Cox states: “the requested data breaking out the in-house and outside work hours is proprietary, confidential, and competitively sensitive. The Confidential Information is not known outside of the Company and is controlled by the Company’s accounting personnel.” Motion at 2. Cox also states that this information cannot be duplicated independently of Company records. *Id.* at 3. The Department finds that the disclosure of this proprietary information would reveal information to Cox’s competitors that it desires to keep confidential and could potentially put Cox at a competitive disadvantage. This finding is consistent with Department precedent granting confidential treatment when revealing such information has the potential to place the operator at a competitive disadvantage. *See, e.g., Pet. of CoxCom, Inc. d/b/a Cox Commc’ns to establish & adjust the basic serv. tier programming, equip., & installation rates for the Town of Holland, D.T.C. 19-3, Hearing Officer Ruling on Confidentiality* (Mar. 3, 2020) (“D.T.C. 19-3 Confidentiality Order”). Thus, the Department finds that this information is confidential and completely sensitive.

The second part of G.L. c. 25C, section 5, directs the Department to treat information as public unless the need for protection is proven. G.L. c. 25C, § 5. Cox asserts that “public disclosure of the Confidential Information would reveal highly valuable information about the

level to which the Company utilizes outside vendors as well as task specific data that could disadvantage the Company when it procures such services from outside vendors, resulting in higher costs and potentially higher rates to customers.” Motion at 3. Cox also asserts that disclosure of this confidential information could place the Company at a further disadvantage because competitors could use the information to derive the Company’s cost centers. *Id.* The Department determines that Cox has met its burden of proving that confidential treatment is warranted because this information is ordinarily not revealed to the public and such disclosure could place the Company at a competitive disadvantage. *See D.T.C. 19-3 Confidentiality Order.*

Finally, G.L. c. 25C, section 5, directs the Department to protect only so much of the confidential material as is necessary to meet the established need. Here, Cox requests confidential treatment of this information for a minimum period of five years. Motion at 3. Cox asserts that this five-year period keeps with past Department precedent. *Id.* The Department finds that a five-year period is reasonable, and sufficiently narrowly tailored to satisfy the requirements of G.L. c. 25C, section 5. Accordingly, the Department grants confidential treatment to Cox’s information for a period of five years from the date of this Ruling. The Department further affords Cox an opportunity to renew its request for confidential treatment at the end of that five-year period based upon a showing of need for continuing protection. The Department leaves to Cox the obligation to calendar the expiration of this time period and move for an extension of confidential treatment, if necessary, prior to the expiration of the initial five-year period.

II. RULING

For the reasons discussed above, the Department hereby:

GRANTS: the Motion for Protective Treatment submitted on October 21, 2020, for a period of five (5) years from the date of this Ruling.

/s/ William Bendetson  
William Bendetson  
Hearing Officer

NOTICE OF RIGHT TO APPEAL

Under the provisions of G.L. c. 30A, § 11(8), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.